

**Notice of Allowability**

Application No.

10/824,821

Examiner

Jessica L. Reidel

Applicant(s)

WEATHERBEE, PAUL

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 04/15/2004.
2. ☒ The allowed claim(s) is/are 57-112, 115, 116 and 123.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 04/15/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael Ervin on Monday October 3, 2005.

2. The claims have been amended as follows:

- Claim 57, lines 1-2, change the preamble from "A method for circulating at least one blood fluid through a living organism in a pulsatile manner comprising the steps of:" to "A method for circulating at least one blood fluid through a living organism in a pulsatile manner with a pulsatile blood pumping system comprising the steps of:".

- Claim 57, line 26, change from "vane defining a at least one fluid chamber for containing fluid within the housing" to "vane defining a at least one fluid chamber for containing blood fluid within the housing"

- Claims 1-56, 113-114 and 117-122 have been cancelled.

3. The changes to the claims are necessary to remedy minor oversights and to cancel claims non-elected without traverse.

### **ALLOWABLE SUBJECT MATTER**

4. Claims 57-112, 115-116 and 123 allowed.

### REASONS FOR ALLOWANCE

5. The following is an examiner's statement of reasons for allowance: The claims in Application #10/824,821 are deemed to be directed to a non-obvious improvement over the invention of Turner (U.S. 6,241,493). Turner discloses a fluid pump, compressor, or motor utilizing or producing rotary shaft power and claims a method of regulating fluid flow in a fluid machine providing a pumping system. Turner does not disclose or provide any suggestion that the '493 system may be biocompatible, implantable or that it may be employed to pump blood fluid through a living organism. Independent Claim 57 of the current Application however, recites a method for circulating at least one blood fluid through a living organism in a pulsatile manner comprising providing a pulsatile blood pumping system.

Wampler. (U.S. 5,840,070) discloses an implantable rotary sealless, however, the apparatus does not operate in a pulsatile manner and is not analogous with the sealed rotary pump disclosed by Turner. The references of the prior art fail to show or teach all of the Applicant's claimed method steps and fail to show or teach any obviousness type improvement over Turner, as a result, the Examiner deems these claims and their depending claims to be allowable over the prior art.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Reidel whose telephone number is (571) 272-2129. The examiner can normally be reached on Mon-Thurs 7-4:30 and every other Friday 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3766

Jessica L. Reidel

